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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/325,963	06/04/1999	BONNIE WEISKOPF ALBRECHT	54664USA4A	3500

32692 7590 12/13/2004

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/325,963

Applicant(s)

ALBRECHT ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 18-24, 29-33 and 36 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-33 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 11/5/2004. Applicants' amendments to claims 29 and 31-33, cancellation of claims 13-16 and 35, and new claim 36 have all been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn.

Election/Restrictions

4. This application contains claims 1-12 and 18-24 drawn to an invention nonelected with traverse in Response file 5/12/2001. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Rejections Based on Prior Art

5. Claims 29-33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindquist (US 3665918) in view of Watson (US 3862282), generally as set forth in section 4 of Office action dated 6/2/2004, together with the following response to argument.

It is noted that claim 29 has been substantially amended to recite, *inter alia*, "a breathable three layer ABA or ABC structure ... comprising: (a) an inner core layer having a thickness of about 86 to about 265 microns, said inner core comprising a breathable thermoplastic foam having at least one major surface and at least one ruptured foam cell, wherein the inner core layer has breathability in a direction perpendicular to a major surface of the foam, and (b) two outer skin layers that are melt-bonded to the inner core layer, wherein each of the outer skin layers comprise an unfoamed polymeric material selected from the group consisting of amorphous or non-amorphous thermoplastic materials, elastomers, thermoplastic elastomers, and semicrystalline polymers."

Additionally, it is noted that the specification defines the term "breathable" or "porous" as meaning having at least one open channel from an outer major surface through the material to another outer major surface through which air can pass (specification, page 3, top paragraph).

For the purpose of clarifying the relied upon prior art, the Examiner repeats (see page 3 of Office action dated 11/6/2002) that Lindquist is directed to a breathable pressure-sensitive adhesive tape comprising a thermoplastic polyurethane foam layer having a pressure sensitive adhesive porous coating applied to one surface and having a porous plastic backing film applied to the opposite surface. The thickness of the foam layer is about 0.001 to 0.025 inches, which reads on Applicant's thickness of about 86 to about 265 microns. Suitable adhesives include rubber-base adhesives and the acrylate pressure-sensitive adhesives (column 5, lines 37-39). The porous adhesive coating

layer and the porous polymeric film layer are both unfoamed (see Office action dated 11/6/2002, page 7).

For newly amended claim 29 and new claim 36, the Examiner repeats (see page 3 of Office action dated 11/6/2002) that since the pores of the polymer urethane foam layer are inherently three-dimensional, they are also inherently breathable in a direction perpendicular to a major surface of the foam sheet of foam. Regarding the product-by-process limitation "at least one ruptured foam cell", the Examiner repeats (see Office action dated 3/18/2003, page 3) that Watson's invention is directed a method to rupture the cellular membranes of polyurethane foams under stretching condition (Abstract), so as to improve the permeability of the polyurethane foam (column 5, lines 53-60). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to rupture the cellular membranes in Lindquist's foam, motivated by the desire to improve its permeability or breathability.

For claim 30, the Examiner repeats (see page 2 of Office action dated 3/18/2003) that Lindquist's polyurethane foam layer is a thermoplastic elastomer. Additionally, the Examiner repeats (see page 9 of Office action dated 11/6/2002) that Lindquist also discloses the use of styrene-butadiene foams, which reads on Applicant's thermoplastic elastomer B layer.

For newly amended claim 31, although Lindquist is silent about the moisture vapor transmission rate, since Lindquist teaches the same subject matter (breathable adhesive tape), in the absence of unexpected results, it the Examiner's position that a suitable moisture vapor transmission rate is either anticipated by Lindquist in view of

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Watson, or an obvious optimization to one of ordinary skill in the art, motivated by the desire to obtain a suitable breathability. It should be noted that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. See MPEP § 2112.01.

For newly amended claim 32, the Examiner repeats (see page 4 of Office action dated 10/15/2003) that Lindquist's pressure sensitive adhesive porous coating inherently reads on two successive coatings of pressure sensitive adhesive layers, because it inherently forms one unitary adhesive layer.

For newly amended claim 33, the Examiner notes that Lindquist expressly teaches that a release coating which may also have a low coefficient of friction may be applied to enhance unwindability (Abstract).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VSC

Victor S Chang
Examiner
Art Unit 1771

12/2/2004



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700